

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA

ITPE-NMU/MEBA PENSION FUND;
ITPE-NMU/MEBA ANNUAL BENEFIT FUND;
and, ITPE-NMU/MEBA HEALTH AND
WELFARE FUND,

ENTERED

NOV 24 1997

Plaintiffs,

vs.

CV-97-S-0870-NE

H. & R. SERVICES, INC.,

Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. Plaintiffs initiated this action on April 9, 1997.
2. Defendant was served with a copy of plaintiffs' complaint and summons by certified mail, return receipt requested, on May 14, 1997. Defendant thereafter failed to answer or otherwise respond.
3. Accordingly, plaintiffs made application to the clerk for entry of default on June 27, 1997. The Clerk entered defendant's default in accordance with Federal Rule of Civil Procedure 55(a) on July 3, 1997. (Doc. No. 8.) The action now is before the court on plaintiffs' application for entry of judgment by default in accordance with Rule 55(b)(2), Fed. R. Civ. P., and the affidavit testimony of Joan G. Wolfe and Albert Franco.
4. The evidence submitted demonstrates that defendant has not made timely contributions to the ITPE-NMU/MEBA Health and Welfare Fund ("Health and Welfare Fund"). Defendant is indebted to

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the Health and Welfare Fund in the amount of \$50,028.38, plus interest from October 17, 1997 to the date of judgment, and attorneys' fees.

5. The evidence further demonstrates that defendant has not made timely contributions in accordance with its agreement with the ITPE-NMU/MEBA Pension Fund ("Pension Fund"). The evidence further demonstrates that defendant owes the Pension Fund the amount of \$58,292.54, plus interest from October 14, 1997 to the date of judgment, and attorneys' fees.

6. The evidence further demonstrates that defendant has not made timely contributions to the ITPE-NMU/MEBA Annual Benefit Fund ("Annual Benefit Fund"), as agreed. The evidence further demonstrates that defendant owes the Annual Benefit Fund the amount of \$100,812.36, plus interest from October 14, 1997 to the date of judgment, and attorneys' fees.

7. Under ¶ 7.02 of the Agreement and Declaration of Trust of each of the subject funds, defendant is due to pay interest at the rate of one and one-half percent per month calculated on a daily basis for all unpaid amounts. Accordingly the amount of interest owed by the defendant is as follows:

ITPE-NMU/MEBA Pension Fund \$731.28.

ITPE-NMU/MEBA Annual Benefit Fund \$1,252.55.

ITPE-NMU/MEBA Health and Welfare Fund \$490.70.

Conclusions of Law

1. Default judgment is due to be entered in favor of plaintiffs and against defendant.

2. The full amount of principal and interest due through November 24, 1997 is as follows:


Pension Fund \$59,013.82;

Annual Benefit Fund \$102,064.91;

Health & Welfare Fund \$50,519.08.

An appropriate judgment consistent with the foregoing findings of fact and conclusions of law shall be entered contemporaneously herewith.

DONE this 24th day of November, 1997.


United States District Judge